



TASK FORCE ON THE FUTURE FOR GROWTH AND DEVELOPMENT IN MARYLAND

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PFA REVIEW OF PUBLIC SCHOOL CONSTRUCTION FUNDING REPORT

PFAs & Schools Work Group

PFAs & Schools Work Group Members:

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- David Lever, Executive Director - Public School Construction Program (PSCP)
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- Rita Misra, Resident – Citizen Planner, Mt. Airy, MD
- John Woolums, Maryland Association of Boards of Education
- Chris Parts, AIA; Principal – Hord, Coplan, Macht, Inc.; U.S. Green Building Council
- David Whitaker, AICP – Maryland Department of Planning
- Amanda Conn, Assistant Attorney General – Maryland Department of Planning

BACKGROUND

The PFAs & Schools Work Group was charged with the development of recommendations on three specific topics for the Task Force on Maryland Growth and Development in October 2008. (See October 24, 2008 Final Recommendations of the APFO Work Group.)

The Three Charges of the PFAs & Schools Work Group:

1. Vertical Schools: Prepare a study on the practicality of building vertical “urban” schools in more densely built areas of PFAs. The analysis should also consider the practicality of making schools part of mixed use or transit oriented development (TOD) projects and co-location of public facilities with schools.
2. Six Year Capital Improvement Program (CIP): Develop options on the practicality of use of a Six Year State Capital Improvement Program (CIP) for Public School Construction. What would be involved in development of a Six Year State CIP for public school construction? Would a Six Year State CIP provide for better predictability to Local Education Agencies (LEAs) of State school construction projected budgets and future funding commitments in out years from the current fiscal year? Can projected budget amounts be provided by the State to the 24 LEAs with some level of accuracy and predictability? Also, what other options can be explored to assure orderly and predictable levels of State school construction funding to LEAs up to six years from the current fiscal year?
3. Priority Funding Area (PFA) Review of School Construction: Based on the October 2008 Recommendations by the APFO Work Group, how should PFA Review of Maryland public school construction projects operate and be conducted in future years? The APFO Work Group recommended that “school construction funding decisions be subject to PFA review in a similar manner to state spending decisions on water & sewer and transportation infrastructure with a

different exception review process. This would restrict funding of new school capacity projects that are not located within priority funding areas with a modified exception process.”

This Report deals only with Charge No. 3, PFA Review of School Construction. The other two charges are addressed in separate reports.

ISSUES TO CONSIDER

The 1997 Smart Growth and Neighborhood Conservation Act established that the State’s policy for state school construction funding is that it be targeted to the rehabilitation of existing schools to ensure that facilities in established neighborhoods are of equal quality to new schools. Md. Code Annotated, State Finance and Procurement Article (SF & P) §5-7B-07. In addition, the 1992 Economic Growth, Resource Protection and Planning Act prohibits the State from funding a public works, transportation, or major capital improvement project which is inconsistent with the State’s Growth Policy (otherwise known as the Planning Visions) unless extraordinary circumstances exist. SF & P §5-7A-02. The 1992 Planning Act relates to all forms of State infrastructure expenditures including public school construction. See also Procedures for State Project Review under the Planning Act of 1992, Maryland Department of Planning, 1992. While State funded water & sewerage and transportation projects are subject to PFA Review, the administration of State school funding programs has not considered location within PFA’s in decisions regarding capital funding, site approvals and related funding programs. The Interagency Committee for School Construction (IAC) has discretion in determining what sites should be approved for proposed school construction projects and in recommending to the Board of Public Works what school construction projects should be funded.

To reduce the known impact that the construction of schools outside of the PFA has on growth patterns, the IAC should consider, in addition to educational factors, the location of projects when making school siting decisions and when recommending funding. Considering PFA location for schools would mirror the current PFA review process for water & sewer and transportation infrastructure and other state funding programs. In determining how the IAC should consider PFA location, the Workgroup discussed the following issues:

- At what stage of the State public school construction process should a determination of PFA status and applicability for State construction funding occur? ▪ Should PFA apply solely to New Construction and Site Approvals, or should it apply to School Capacity Increases (addition projects) and other categories of State funded school construction projects that are located outside of PFAs?
- Specifically, should location outside of a PFA be considered in Renovations and Systemic Projects?
- Should projects that were previously approved as locally funded projects and which are currently, or anticipated to be, requested for State funding approval be reviewed for their location inside or outside of the PFA?

There may on occasion be a need for a new school in a rural situation, for example, a new career and technology half-day or three quarter-day center that is located equidistant from the three or four comprehensive high schools that it serves in a largely rural county. In other cases, a new school will be replacing other rural or small town schools that will be closed because of under-enrollment, and consequently will not increase the overall capacity of the school system. The rural location of the new school would again be determined by transportation factors and would not tend to stimulate inappropriate housing development. Since the Maryland State Department of Education does not currently have a definition of "rural school," we believe that this rare type of project request should be treated under the IAC waiver process that will be established in the PFA review procedure.

RATIONALE FOR CHANGES

The PFAs & Schools Work Group examined a broad range of issues and topics related to the above questions. Ultimately, it was determined that there is an overriding public interest in the upkeep and maintenance of the inventory of public school facilities throughout the State regardless as to whether schools are located within PFAs or outside of PFAs. Accordingly, renovations, systemic projects and additions that are intended to comply with State mandated programs (such as Full Day Kindergarten) should be exempt from PFA Review.

The PFA & Schools Work Group examined the applicability of addition projects for capacity purposes outside of PFAs and whether capacity projects such as these should be subject to PFA Review. It was the consensus of the PFAs & Schools Work Group that Planning and Funding approvals for work in existing facilities, for additions, and for replacement schools should not be subject to PFA review. Only new schools would be subject to PFA review.

RECOMMENDATIONS

Summary

It is the recommendation of the PFAs & Schools Work Group that decisions regarding site approvals and planning/funding for new public school facilities be subject to Priority Funding Area (PFA) review in the same way that State spending decisions on water and sewer and transportation infrastructure are, but with a different exception review process. This would restrict funding of new school capacity projects that are not located within priority funding areas, although a modified exception process was recommended to this provision.

Both site approvals and State funding for new school construction projects that are not located within PFAs would be restricted, with an exception process through the Board of Public Works on recommendation of the Interagency Committee on School Construction (IAC), in consultation with the Smart Growth Sub-Cabinet as applicable. Disputes will be resolved by the Board of Public Works. In order to accomplish these objectives MDP and the IAC will work in consultation with the Attorney General's Office to determine the most effective approach.

It is also recommended that public schools that are "locally funded" and "forward funded" by LEAs as of Fiscal Year 2010 should be Grandfathered from the above PFA Review process. "Locally funded" means that the local educational agency (LEA) has proceeded with the project prior to State approval of planning in an annual Capital Improvement Program, and has received approval of the educational specifications, the design, and the contract award (as applicable) by the State Superintendent. Projects that have been approved for planning in an annual CIP as of FY 2010 but have not been approved for funding would also be grandfathered and would be eligible for future State funding.

Specific Recommendations

Abbreviations:

APFO	Adequate Public Facilities Ordinance
BPW	Board of Public Works
Designees	Appointees of the three IAC agency heads
IAC	Interagency Committee on School Construction
LEA	Local Educational Agency
Local school district	The local board (county board) and the school administration
PFA	Priority Funding Area
PSCP	Public School Construction Program

- A. After <<date of approval of policy>>, PFA review will be conducted for:
1. Sites for new schools that are proposed outside of PFAs, including:
 - a. Requests for acquisition of new sites for new schools;
 - b. Requests for re-approval of existing sites (required every five years) that were initially approved after <<date of approval of policy>>.
 - c. Requests for re-designation of existing sites (e.g. a site previously designated for a middle school is now requested to be used for an elementary school) that were initially approved after <<date of approval of policy>>.
 2. Requests made in an annual Capital Improvement Program for planning and funding of new schools that are proposed outside of PFAs.
- B. Grandfathering of Projects:
1. Public school projects that are “locally funded” by LEAs as of Fiscal Year 2010 will be exempt from the above PFA Review process and will remain eligible for approval of planning and State construction funding.
 2. Public school projects that have been approved for planning in an annual CIP as of Fiscal Year 2010 will be exempt from the above PFA Review process and will remain eligible for State construction funding.
- C. Criteria and Process for Granting of Exception:
1. The BPW shall develop, on recommendation of the Smart Growth Sub-Cabinet and the IAC, regulations regarding both the criteria and the process for granting an exception to a request for site approval or funding.
 2. A site that was approved prior to <<date of approval>> will not be subject to PFA review for re-approval or re-designation if a new school on the site received planning approval within five (5) years of the date of the previous approval.
 3. Acquisition of a proposed site for a new school, or approval of State planning and funding for a new school project that is outside of a PFA, is prohibited unless an exception is granted by the IAC.
 4. The criteria for granting an exception shall take into account, as applicable:
 - a. Evidence of efforts made by the local school district and local government to secure a site within a PFA that is of a size, location, and configuration that can support the proposed educational program and serve an appropriate student body. For each evaluated site, criteria that must be considered include:
 - (1) Costs of each site, including both quantifiable first costs and life cycle cost analysis (LCCA) inclusive of transportation costs, and non-quantifiable costs such as administrative inefficiencies or lost teaching time, in order to demonstrate that sites within the PFA are more costly than those outside.
 - (2) Benefits of each site, including the impact of the proposed site on community life, on walkability for students, on access to public

transportation, and on access of students to educational programs and non-curricular activities.

- b. Evidence that if a site outside of a PFA is selected because of inability to locate a site within a PFA that is of a size, location, and configuration that can support the proposed educational program and serve an appropriate student body:
 - (1) The new site is located as proximate to the PFA as possible.
 - (2) The local school district proposes to mitigate potential negative effects of the site on educational delivery.
 - (3) Local government instruments for control of land use, including the comprehensive plan and zoning, restrict the growth of housing development outside of the PFA that may result from the new school.
 - c. Evidence of efforts made by the local school district and local government to achieve the needed capacity through additions to existing schools within PFAs.
 - d. The location of the student body served (which may be largely or entirely within an existing or a proposed PFA).
 - e. The potential for the proposed new school to be permanently connected to existing or proposed municipal water and sewer service that is in the local six-year capital improvement program.
 - f. The effect of the new school in relieving APFO closure within an existing PFA or local growth area.
 - g. Opportunities for co-location and/or joint use that the site may make possible.
 - h. Opportunities for re-use of an existing facility.
 - i. Other factors that may be presented by a local school district with the request for site approval or planning/funding, or may be developed by the IAC in consultation with local school districts and local governments.
3. General exception procedures:
- a. Site approval:
 - (1) Proposed site is submitted to MDP via PSCP for approval to acquire a site for a new school, to use an existing site for a new school, or to re-designate an existing site for a new school. Local school system presents request for waiver of PFA restriction based on submitted documentation and evidence.
 - (2) On determination by MDP that site is outside of PFA, the Designee for the Secretary of Planning will initiate the review and approval process:
 - i. Discussion with IAC Designees and PSCP.
 - ii. Based on recommendation of Designees, IAC will consider the exception and make a determination.

- iii. The IAC may approve the site, may approve it with conditions, or may deny approval.
 - iv. The IAC may consult with the Smart Growth Sub-Cabinet on the recommendation of the Secretary of the Department of Planning and the Secretary of the Department of General Services.
- (3) IAC reports to the Board of Public Works
 - i. BPW approval is not required for site approval in most instances.
 - ii. In instances in which the Smart Growth Sub-Cabinet disagrees with the decision of the IAC, the BPW will make a final determination based on evidence presented by the IAC and the Sub-Cabinet.
- b. Planning / funding approval:
 - (1) Proposed project is submitted to IAC in annual CIP for approval of planning, or planning and funding.
 - (2) On determination by MDP that project is in a school outside of PFA, MDP will initiate the review and recommendation process:
 - i. Discussion with Designees and PSCP. (Note: project must be eligible on other counts, e.g. enrollment justification.)
 - ii. Based on recommendation of Designees, IAC will consider and make a recommendation for planning, or planning and funding, to BPW.
 - iii. The IAC may include conditions with the recommendation.
 - iv. The IAC may consult with the Smart Growth Sub-Cabinet on the recommendation of the Secretary of the Department of Planning and the Secretary of the Department of General Services.
 - (3) BPW will make final determination (as part of overall approval of CIP recommendations by IAC, in January or in May), including resolution of any disagreement between the IAC and the Smart Growth Sub-Cabinet.